

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
AUGUST 25, 2021
HELD ONLINE VIA ZOOM APPLICATION

Commission Members Present: Timothy Archambault, Chair, James Kelley, Jr., Richard Shiers, and Barry Norris

Commission Members Absent: Edward Kelleher

Staff Members Present: AAG, Ron Guay, AAG, Henry Jennings, Carol Gauthier, Joy Bonenfant, Miles Greenleaf, Jaime Wood, and Dr. Zachary Matzkin

1. Call the Meeting to Order and Introductions

- 2. Maine Harness Horsemen's Proposal to Allow Horsemen to Administer Lasix.** The Maine Harness Horsemen's Association is requesting that the Commission consider a request to allow horsemen to administer Lasix. The Commission will review/discuss the request.
- Henry Jennings stated he received a request from the Maine Harness Horsemen's Association to consider a proposal about transferring administration of Lasix to the horsemen particular the trainers. Debbie Patterson stated as you all know Lasix is given the day of the race. The horsemen need to arrive 3 to 4 hours before their post time for the vet to give them Lasix shots. Because of this, horses are standing in the paddock 6 to 7 hours. Coming this fall at First Tracks all the post times will be at 11:00 a.m. As for budget issue for a possible rule change. The trainers are still willing to pay a fee to be on the Lasix program. This is convenience for them. More time at home in the barn. This issue has been discussed with trainers for quite some time. Some judges have discussed this with Michael Cushing and veterinarians. Commissioner Kelley asked Ms. Patterson that she stated the time in the paddock for Lasix in Maine is 3 to 4 hours. It's 3 hours in Maine. Ms. Patterson stated she wasn't sure. Commissioner Kelley asked if anybody knew what the lead time is at Plainridge for Lasix. Ms. Patterson stated 4 hours. Commissioner Kelley stated the Maine horsemen have a fair amount of travel time. He wonders if they are going to change this rule also. Commissioner Norris stated taking this into consideration he would make a motion that the Commission look into this program for the horsemen and ask staff to research the Lasix program across the United States in other venues and have discussions with other professional organizations dealing with administration of Lasix. Then bring it back to the Commission possibly have a public hearing dealing with his matter so they can make an informed decision and get back to the horsemen in a timely manner. Commissioner Shiers seconded. Commissioner Kelley stated that's a good idea. How many other associations or tracks in the country have done this if any? Probably an easy way to find out is through the USTA. Commissioner Archambault stated from his educating himself on this topic he talked to other folks and from what he is hearing they do this at the Meadowlands and some other tracks as well, and he agrees with Commissioner Norris that would be an appropriate next step. Commissioner Archambault asked for the vote. Commissioner Kelley stated yes, Commissioner Shiers stated yes, Commissioner Norris stated yes and Commissioner Archambault stated yes. Mr. Jennings stated they were all in an affirmative. Mr. Jennings asked for any further discussion. Commissioner Shiers stated he would like Mr. Jennings to reach out to Dr. Sams from Kentucky. Commissioner Archambault asked for any background work that they have already done have there been any cost savings in terms of the operations of harness racing in Maine. Will this save any money on the back end anywhere? Mr. Cushing stated he submitted the email to Mr. Jennings and wanted to clarify a couple of things. This was brought

to him from a few individuals and some are directors on their board. This would be a cost savings for the state because the horsemen for the convenience and the health and the well-being of the horses would more than sacrifice the revenue that comes in from the industry for the Lasix program and they expect to continue. Commissioner Kelley stated for context he would feel a lot more comfortable for the Commission to even consider this if the MHHA Board considered it or voted on it and also the membership. He just feels they are doing this backwards. Commissioner Norris stated he would think that would be part of the fact finding that staff brings back to them. Diann Perkins stated that next year in 2022 that thoroughbreds are doing away with Lasix on race day. The New York fair circuit does permit Lasix, but it has to be given by a state vet. There is a number of horsemen in the State that are using Lasix. In Skowhegan on August 17th, there were 64 horses not including Stakes horses that were put in the box and out of those 64 horses 43 were on Lasix. She thinks they need to find out if eventually the USTA will be part of that Federal Program and this committee needs to look into. There is a problem in the state like the fair people do not have Lasix barns or places for the horses to go. Gunnar LaCour from First Tracks stated he wanted to ask if the two tracks make sure they are included in these discussions. From their perspective as they try to build out their national and international signal distribution among other initiatives that they have. Medication integrity is a huge issue right now in the industry as a whole and so they would like to put in their two cents as this moves forward. Mr. Jennings stated by way of clarity he thinks Commissioner Norris' original motion was to have staff conduct research. Commissioner Norris stated his charge in the motion was that the staff do it. They can interview all the people that have talked this morning but rather than have a committee to his belief the staff should look into this and come back, and if you need further guidance you ask the Commission for that guidance. Commissioner Kelley stated he would agree with Commissioner Norris. Commissioner Archambault stated he also agrees just to reduce the levels of bureaucracy and make this as swift as they can do it. Mr. Jennings stated he thinks he has sufficient guidance to move forward.

3. Commission Discussion About Resolving Some Violations Through Consent Agreements.

The Commission will continue its discussion about the possibility of resolving some harness racing violations through consent agreements.

Mr. Jennings stated this is about prohibited substance violations. He provided to the Commission for their reading 10 pages of excerpts from the minutes beginning in 2016. Chapter 17 describes minimum penalties for both a fine and potential suspensions and the loss of purse. You can choose to do a 5 year look back. He is not going to present a consent agreement that is inconsistent with any policy the Commission is going to adopt. Commissioner Kelley stated that he agrees with him but is he advising that this consent agreement has to get finalized by the Commission or are you recommending not even coming to the Commission. Mr. Jennings stated he thinks you could do it either way. He's not recommending that it doesn't come in front of the Commission. There is value to having it come before the Commission. One is it's more transparent and more public. Commissioner Kelley stated he thinks the Commission can hopefully work on a framework. One is they should look back 4 or 5 years. AAG, Guay stated the Legislature gave the Commission the power to discipline not the staff. You would have to vote on a very, very specific delegation. You would say the delegation is such under these facts and these penalties. The best way to do this is have a schedule. There is a schedule in the prohibited substance. You could say as a Commission that if the facts are there under these factors then you are allowed as staff to move forward with this penalty. You could do that but absent a predetermination you have to weigh in and one way to do that is through a consent agreement. At this point of the meeting, the chair was bumped off. Commissioner Norris made a motion to have Commissioner Kelley as chair. Commissioner Shiers seconded. Commissioner Norris stated his comment would be to AAG, Guay and to Mr. Jennings and to

proceed with writing up a procedural program to be presented to the Commission and approve a consent agreement program that they could live with. No consent agree would be entered into with death resulting to a horse. In writing your procedural matter he thinks you need to put in there, whatever level they agree on they are not going to overturn them. He would like to see something in writing. Commissioner Kelley stated his suggestion would be for now to limit to prohibited substances. Commissioner Norris stated it works for him. AAG, Guay stated in terms of the race violations those are levied by the judges. Typically, you don't get involved in those. He is certainly not suggesting that the central office in Augusta starts potentially undercutting the legs under our track judges by having people appeal the track judges and then having central office do consent agreements. He wants to be clear. One clarification is where the Commissioners are angling that, is that they develop a policy and then what you're saying is if they stay within that policy it's okay to offer it to the horseman. Then they bring that back to the Commission it is called a consent agenda and then they will vote. Commissioner Kelley stated there is a difference between a first-time offense and a multiply person in the last 5 years or frequent flyer. In his view there is a big difference between those two. Meaning the first-time offender who has been racing for 20 years and has never gotten a positive test that person should get the bare minimum verses someone who has had however many in the last 5 years. AAG, Guay stated if the person cooperates with them and provides the information and not asking for a hearing you need to incentivize people to want to do a consent agreement, so can they give a little off the penalty if they cooperate and agree not to go to a hearing. Commissioner Kelley stated he thinks everybody agrees with that, and to take a step further that it's a worst idea to come in before the Commission then to do a consent agreement. (Commissioner Archambault returned at this point.) Commissioner Shiers stated he wanted to explain his position on this consent agreement. He is all for a consent agreement and his first priority is if it's a positive test that they return the purse money and use that as a bargaining chip to lower it down. He wants it done in a timely manner. He wants the Commission to consider a rule that says all positive test need to be adjudicated within 90 days. AAG, Guay stated you can't do that. He stated if people do not pay a penalty or do a purse return and they've been ordered to do it, you certainly can pull their license with the proceeding. They had a problem for a while. What they did was send out notice of hearings to pull their license. They never had a hearing because they paid. Commissioner Norris stated that to move this along he would like to propose that the Commission staff draft a procedural policy have it presented to them for them to review dealing with the bullets that Mr. Jennings presented. Commissioner Shiers seconded. Commissioner Archambault stated he believed they already discussed this last time and his understanding is that is how they would proceed. AAG, Guay stated he hasn't had time and he is not going to have time. He has had no time to work on harness racing. Commissioner Norris stated just to get it done. Commissioner Archambault stated he would like to make one comment regarding the concept of a consent agreement having to pass through the Commissioners kind of like the financial incentive on the other end of that looking at it from the horsemen's perspective he's not sure he understands how it works, but it sounds like the agreement is signed and as Commissioners one of the possible action steps is they have to approve the consent agreement or is it just to inform them. If it starts having to come to them and that's another layer of friction that's going to make a consent agreement not appealing, so he wants some clarification on that. Commissioner Kelley stated they talked this over with Mr. Guay and they thought in the interest of transparency the Commission needs to approve these in the final step. Is that not what they agreed to. Commissioner Norris stated he thinks it is. AAG, Guay stated he wants to be clear in his advice. Let's say you granted Mr. Jennings the ability to do this. You could require as part of Mr. Jennings executive director report to say the Commissioners get all of these things and during the executive director's report the executive director tells the Commissioners and the public hears that they had 5 consent agreements. Three of them had to do with TCO2, one had to do with Betamethasone, the fines were x, y, and z. He

can report that. He can report and you can have transparency after he ask. A consent agreement isn't like just because Mr. Jennings has the power to do something, you can have him report on it. You can say this policy clearly needs to be tweaked because they don't like what's going on. Then you take another vote and say you wish to amend the policy they've given Mr. Jennings the power to do this. They want to amend this. Commissioner Kelley asked Mr. Jennings did they agree to limit this to positive test or prohibited substances at this point. Mr. Jennings stated yes. Commissioner Archambault stated let's agree the next time we talk about this we have a document they can work from had it tweaked and finalized. AAG, Guay stated he can't promise he can deliver any result like in two weeks. Commissioner Archambault stated his intent was the next time they talked about this.

4. Adjudicatory Hearings:

RE: Hearing on the Horse Supply. Pursuant to 8 M.R.S. § 271 (7), the Commission will take testimony to determine whether the horse supply in the State has been adequate for the number of dashes conducted on assigned race dates and may limit the number of dashes that a licensee may race after August 1.

Mr. Jennings stated he would have Miles Greenleaf talk about horse supply. Mr. Greenleaf stated the commercial tracks looked like the horse supply was pretty adequate for the amount of racing that they had at the commercial tracks. The fairs had a lot of short fields. He gave a comparison. There was 49 racing days for the commercial tracks and 35 five horse fields and 139 eight horse fields. For the 2 1/2 weeks at the fairs, there's been 40 five horse fields and only 14 eight horse fields. He is missing a couple of days of data for the horse supply numbers for both the commercial tracks and the fairs. There has been a lot of 5 horse fields at the fairs already. Commissioner Shiers stated he believes the race secretary at the fairs are not as creative like at First Tracks. Commissioner Kelley stated that they have zero Canadian horsemen racing which is the first time this has ever happened. Don't you think that would be contributing some to our horse supply issues. Mr. Jennings stated absolutely. He thinks one thing they should observe is that this is the first year they have had no overlap with the commercial tracks and the fairs. What they have done is gone from 4 days a week to 7 days a week. He's been looking at the programs and that's a lot of 5 horse fields. The statute allows you to limit the number of dashes after August 1st. He thinks the horse supply kind of does that for you. You may want to recommend that the fairs try not to over do it with the dashes to make sure that they minimize those number of 5 horse fields. Mr. Greenleaf stated he thinks they have totally because there's been times where they have gone 8 races. Commissioner Kelley stated one thing is they are having very few non betting sire stakes races. AAG, Guay stated he thinks you need to take a vote because it is a hearing. Commissioner Shiers made a motion that they do not reduce the number of dashes. Commissioner Norris seconded. Vote 4-0.

5. Commission Discussion About the Quality of Video Signals/Recordings From Maine's Fairs. As the 2021 Pari-mutuel Fair Season ramps up, complaints have arisen about the low quality of the racing videos being produced at Maine's Pari-mutuel fairs. The Commission will discuss the concerns.

Mr. Jennings stated they struggle from time to time with the video's signals and recordings from the fairs. This year at Cumberland they have updated the equipment. He has run into some complaints at the fairs. They have had discussions about trying to upgrade the equipment that is used at the fairs. There have been suggestions that the Commission could buy new cameras or additional cameras. Commissioner Archambault stated to Mr. Jennings he mentioned that the state provides cameras. His son works at Hollywood in Bangor for a third-party company that does the video at the track is this different is the fair circuit a different process than Hollywood

and First Tracks. Mr. Jennings stated he thinks so the cameras are different. The equipment is somewhat different because it has to move around every week. If he led you to believe that the state has supplied the equipment historically that is not the case. Commissioner Shiers stated he had a lot of compliments how good the signal is coming out of Cumberland. These fair signals he believes haven't been upgraded in decades. Commissioner Norris stated the fairs hire the same two companies that the commercial tracks do, International Sound and the Tote Company. Those provide the information that goes to the box that is sent out. If there is a camera issue the camera issue is because of the people providing the product to the fairs. The fairs upgrade whenever they are told they need to by the company. The fairs upgrade as they have done and in a couple of instances this year to Wi-Fi as requested by the 2 companies that they hire. What they are using to get the signal out by these sling boxes will no longer be supported in 2022. The tracks are now discussing how they are going to get the signal out. Right now, he believes Roberts is hired by First Tracks and Roberts is hired by Hollywood Slots or Bangor Raceway. The fairs have tried to negotiate with Roberts to bring that signal to the tracks. Presently there are 2 tracks that use that signal, Skowhegan and Farmington. The person in charge of representing the fair tracks has tried to negotiate with Roberts. Roberts wants \$1,500 a day for every day that they race or if there is a cancelation, they are still charging them \$1,500 a day. There is no way that the fair tracks can afford the \$1,500 a day. They are trying to upgrade the contracts. They don't need a tote at the fairs. They need an area where people can see the odds. They are also talking about whether or not the people at International Sounds are supporting their people or staff in Maine. They don't believe they are. The seven tracks are talking amongst themselves on how they are going to upgrade for 2022. The OTB's have their signals up and running. He is making sure all the OTB's have their sound. The person who operates the camera is an employee of the company that the fairs have to hire. Mr. Jennings stated if the Commission agrees with him he is going to pursue an opportunity with the fairs over the next year to explore what all the options are and see if there's a path forward that may involve the idea of financial support of upgrading. He's interested in working with the fairs and improving the quality of the signal and where that signal goes. AAG, Guay stated under the statute to the extent that you were to find this a deficiency in terms of the criteria under 271 you would submit a notice of deficiency to a track. If there is a problem, you have certain powers to work formerly to deal with this. Mr. Jennings asked if they needed a vote. AAG, Guay stated no but he would characterize it only because if this ever became a problem what you did is you issued a report today and received some advice by the Commissioners on how they would like to see how the department moves forward.

6. Update on Fines, Suspensions and Prohibited Substance Cases

Mr. Jennings stated Mr. Greenleaf has some statistics and update on fines, suspension and prohibited substance. Mr. Greenleaf stated this year including the fairs they have taken 1,133 post race samples and 266 blood gas TCO2 pre-race test and 24 out-of-competition test. They've had 4 positives. They had one high Bute and one high Banamine and two of them are TCO2 positives. For the driving fines, they had 43 fines or suspensions for driving violations. He will continue to send all the fines and suspension sheets.

7. Other Business

Mr. Jennings stated the Governor's state of emergency expired on July 1st which meant they were to move to public meetings within 30 days; and then the Delta Variance started to ramp up and the department is not in favor of public meetings to the extent they could be held remotely. He thinks they are going to be doing remote meetings in the short term. AAG, Guay stated there was a sub team of 9 people discussing remote meetings and hearings. The general guidance of his colleagues in his office but he would say if there are no adjudicatory hearings, they would skinny that down to 14 days. They developed a very short declaration of emergency

and essentially under the policy the chair is going to have to do that. Typically, in terms of timelines, adjudicatory hearings would be 30 days. The declaration of emergency they feel most comfortable with Mr. Archambault making a declaration of emergency no further out than 14 days. Under your policy you provide for remote participation at all meetings and then the decision that Mr. Archambault would make within the 14 days is whether it would be all remote. If they have hybrid meetings and let's say COVID is done under this policy, if you keep this Zoom link and let's say they have a snow storm the State office building is closed if you already have the Zoom link in your agenda you can still have a meeting. Commissioner Shiers stated he wasn't in favor of having these Zoom meetings.

8. Public Comment

Diann Perkins stated the 2 year olds are halfway through their 8 leg schedule. The 3 year olds start their 8 leg out of 12 today at Union Fair. Of the 3 year olds 80% of all 3 year olds that were sustained are racing. The 2 year olds that have been sustained 62.6 are all racing. Most stake races do not even have 50% of their sustained horses racing. Pembroke is going to try to have racing at the Pembroke Fair. Racing at Cornish on September 12, 2021.

9. Adjourn

Commissioner Norris made a motion to adjourn. Commissioner Shiers seconded.
10:49 a.m.